

## Coast Guard, DHS

## § 5.35

5.905 Commandant's decision on application.

AUTHORITY: 46 U.S.C. 2103, 7101, 7301, 7701; 49 CFR 1.46.

SOURCE: CGD 82-002, 50 FR 32184, Aug. 9, 1985, unless otherwise noted.

### Subpart A—Purpose

#### § 5.3 Purpose of regulations.

The regulations in this part establish policies for administrative actions against mariners' licenses, certificates or documents issued by the Coast Guard.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

#### § 5.5 Purpose of administrative actions.

The administrative actions against a license, certification or document are remedial and not penal in nature. These actions are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea.

### Subpart B—Definitions

#### § 5.15 Investigating Officer.

An *investigating officer* is a Coast Guard official designated by the Commandant, District Commander, or the Officer In Charge, Marine Inspection, for the purpose of conducting investigations of marine casualties or matters pertaining to the conduct of persons issued a license, certificate or document by the Coast Guard. An Officer in Charge, Marine Inspection is an investigating officer without further designation.

#### § 5.19 Administrative Law Judge.

(a) An *Administrative Law Judge* shall mean any person designated by the Commandant pursuant to the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 46 U.S.C. 7703 or 7704.

(b) The Commandant has delegated to Administrative Law Judges the authority to admonish, suspend with or without probation or revoke a license, certificate or document issued to a per-

son by the Coast Guard under any navigation or shipping law.

#### § 5.27 Misconduct.

*Misconduct* is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

#### § 5.29 Negligence.

*Negligence* is the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

#### § 5.31 Incompetence.

*Incompetence* is the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof.

#### § 5.33 Violation of law or regulation.

Where the proceeding is based exclusively on that part of title 46 U.S.C. section 7703, which provides as a basis for suspension or revocation a violation or failure to comply with 46 U.S.C. subtitle II, a regulation prescribed under that subtitle, or any other law or regulation intended to promote marine safety or protect navigable waters, the complaint must state the specific statute or regulation by title and section number, and the particular manner in which it was allegedly violated.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by USCG-1998-3472, 64 FR 28075, May 24, 1999]

#### § 5.35 Conviction for a dangerous drug law violation, use of, or addiction to the use of dangerous drugs.

Where the proceeding is based exclusively on the provisions of title 46, U.S.C. 7704, the complaint will allege